

in opinion

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NEW HAMPSHIRE LAW LIBRARY

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February 7

CONCORD, N.H.

Mr. William A. Jackson, Chairman,
State Liquor Commission
Concord, New Hampshire

Dear Sir:

Re: Application for off-sale permit - Champagne's Super
Market Co., Daniel Webster Highway, Inc.
Proposal for gifts of champagne at opening of same

You have inquired concerning the propriety of issuing to the above named applicant an off-sale permit in view of the fact that the officers of the named corporation include all the people who are officers of Champagne's Super Markets, Inc. and of Champagne's Super Market Corporation, both of which corporations now hold off-sale permits issued by the State Liquor Commission. In this connection it is observed that Roland Genest holds no office in Champagne's Super Markets, Inc., subject to which exception the personnel of the officers of all three corporations is identical, although they do not occupy the same offices in each of the three corporations. Your question arises because of the fact that R.L., c. 170, s. 76, reads, in part:

"No person shall directly or indirectly hold more than two off-sale permits at one time and no holder of an off-sale or on-sale permit shall have in his employ, in any capacity, any person who is the holder of any permit provided in this subdivision."

It is my opinion that neither this section nor any other section of the statute prohibits the issuing of on-sale or off-sale permits to a corporation such as the applicant which holds no other or no more than one other off-sale permit.

S. 1 of the statute, in sub-section III, defines "person" as "individual, firm, association, copartnership, corporation, or society". Thus, each of the three corporations mentioned above is a separate person within the terms of the statute. It is the corporation in each case which "holds" the permit, and it cannot be said that any one of the officers is the holder. Ownership of any one of the corporations may be transferred by transfer of the stock. Stock ownership is not a matter of public record, as a result of which

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it is impossible to trace or determine changes in ownership of any corporation.

It is to be noted that section 69a, prohibiting the holder of a wholesaler's permit, and others, from having any interest in the business of the holder of an on-sale or off-sale permit, defines certain methods of indirect ownership. Such methods of indirect ownership are not defined in s. 76, leading to the conclusion that the prohibition was not intended to be of the stringent nature imposed by the terms of s. 69a.

It would be entirely possible for each of any three of the officers of the three corporations named to hold all the stock of one of the enterprises, in which event it could scarcely be said that the others in any sense owned a share in the permit granted to the other corporations. Again, if every stockholder of a corporation holding a permit is to be considered as himself holding the permit issued to the corporation, it would mean that no person could hold stock in more than two corporations having off-sale permits. It is my opinion that such a conclusion was not intended by the Legislature, and that if it was intended, it would be entirely impossible to administer it.

It is my conclusion that no single corporation may hold more than two off-sale permits at one time, but that this provision of the statute does not prevent the issuing of an off-sale permit to a corporation the officers of which happen to be the same people who hold office in two other corporations to which such permits have been issued.

Your second question is whether Champagne's Super Market, Daniel Webster Highway, Inc. may legally, at its opening for business, give away to certain customers, to be selected at random by some prearranged scheme, such as each fiftieth person, a bottle of champagne. My opinion is that such gifts may not legally be made.

The basis for this opinion is clearly provided in No. 7 of the General Regulations of the Commission, appearing on page 38 of the publication entitled "Laws and Regulations Relative to the Sale of Liquors, Beer, and Wines", edition of 1950,

"No beer or liquor as defined by laws relating to the sale of alcoholic beverage and liquor shall be given away with the purchase of merchandise or food or as payment of any admission or fee in any business enterprise. Nor shall any coupon, ticket or check which may be exchanged for beer or liquor be given away directly or indirectly in connection with any such admission price or fee."

Very truly yours,

Maurice M. Blodgett
Deputy Attorney General

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